

**United States Bankruptcy Court  
Eastern District of Virginia  
Alexandria Division**

**In re:**

**Valley Green Landscaping, Inc.**

**Case No. 18-11216-BFK**

**Debtor.**

**Chapter 11**

**Hearing Monday, April 22, 2019, 11:00 am  
Courtroom I, 2nd Floor**

**Motion to Dismiss or Convert Case to Chapter 7**

Comes Now, John P. Fitzgerald, III, Acting United States Trustee for Region 4, and moves the Court to dismiss or convert this case to Chapter 7 pursuant to Section 1112(b)(4) of the Bankruptcy Code.

Cause exists to grant the requested relief:

- Inability to confirm a plan – This is a small business case. No disclosure statement and plan have been filed. The time period to file a disclosure statement and plan has expired. 11 U.S.C. Section 1121(e)(2); Section 1112(b)(4).

**Jurisdiction**

1. This Court has authority to hear and decide this matter. 28 U.S.C. § 1334.

John P. Fitzgerald, III  
Acting United States Trustee  
For Region 4  
Jack Frankel, Attorney  
115 S Union Street  
Alexandria, VA 22314  
(703) 557-7229  
[Jack.I.Frankel@USDOJ.Gov](mailto:Jack.I.Frankel@USDOJ.Gov)

2. This is a core proceeding. 28 U.S.C. §157.

### **Statement of Facts**

1. On April 6, 2018, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code.
2. In the petition, the Debtor checked it was a small business debtor as defined in 11 U.S.C. Section 101(51D). Voluntary Petition for Non-Individuals Filing for Bankruptcy, Docket No. 1, page 2, Question No. 8.
3. Section 1121(e) of the Bankruptcy Code states, in part: “In a small business case ... (2) the plan and disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief;”
4. The time period to file a disclosure statement and plan has not been extended by the Court.
5. It is too late to request the Court to extend the time period to file a disclosure statement and plan.
6. A requirement to extend the time to file a disclosure statement and plan is that the order must extending the time must be signed before the 300-day deadline. Section 1121(e)(3)(C) of the Bankruptcy Code states “the order extending time [to file disclosure statement and plan] is signed before the existing deadline has expired.”
7. The deadline has expired.

## Argument

The Court, for cause, after notice and hearing, may dismiss or convert a case to a case under Chapter 7 whichever is in the best interests of creditors and the estate. 11 U.S.C. Section 1112(b)(1).

The failure to file a disclosure statement and plan within 300 days is cause to convert or dismiss this case. As stated in *In re Veridia, LLC*, No. 2:15-BK-20181, 2016 WL 3049655, at \*3 (Bankr. S.D.W. Va. May 20, 2016) “Congress could not have been clearer...cause exists to dismiss or convert the case for the failure of any party to file a plan within the 300-day period or to timely obtain an extension.” (citations omitted).

There is no bright-line test to determine whether conversion or dismissal is in the best interests of the creditors and the estate. *In re Babayoff*, 445 B.R. 64, 81 (Bankr. E.D.N.Y. 2011).

The case should be dismissed or converted to Chapter 7, whichever is in the best interests of the estate and creditors.

John P. Fitzgerald, III,  
Acting United States Trustee  
For Region 4

/s/ Jack Frankel  
Jack Frankel, Attorney  
Office of United States Trustee  
115 S Union Street

Alexandria, VA 22314  
(703) 557-7229

**Certificate of Service**

I hereby certify that on the 22nd day of March, 2019, I mailed, United States mail, first class, postage prepaid, a true copy of this motion and notice of motion and hearing to:

Valley Green Landscaping, Inc. PO Box 1003 Falls Church, VA 22041	Ashvin Pandurangi AP Law Group, PLC 211 Park Ave. Falls Church, VA 22046 Email: <a href="mailto:ap@aplawg.com">ap@aplawg.com</a>
---	--

/s/ Jack Frankel